



SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245-AH96

Surety Bond Guarantee Program: Removing Obsolete Forms

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The Small Business Administration (SBA) is issuing this direct final rule to remove references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program. SBA Form 990A is obsolete and has been discontinued.

DATES: This rule is effective [DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], without further action, unless significant adverse comment is received by [DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the Rule in the *Federal Register*.

ADDRESSES: You may submit comments, identified by RIN 3245-AH96, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for the rule by RIN number 3245-AH08 and follow the instructions for submitting comments.
- Mail: Jermaine Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416
- SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to

Jermaine Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

FOR FURTHER INFORMATION CONTACT: Jermaine Perry, Director of Surety Guarantees at (202) 401-8275 or Jermaine.perry@sba.gov.

SUPPLEMENTARY INFORMATION:

A. General Information

The U.S. Small Business Administration (SBA) amending its Surety Bond Guaranty (SGB) rules to remove references to *Quick Bond Guarantee Application and Agreement* (SBA Form 990A). Form 990A was integrated with the current version of Form 990 and therefore discontinued. SBA guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee authorized pursuant to part B of title IV of the Small Business Investment Act of 1958, 15 U.S.C. 694a *et seq.*, gives an authorized surety company ("Surety") an incentive to provide bonding for small businesses; thereby assisting small businesses in obtaining access to more contracting opportunities. SBA's guarantee is an agreement between SBA and a Surety that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract. SBA is authorized to guarantee a Surety for a contract up to \$6.5 million and, with the certification of a contracting officer of a federal agency, up to \$10 million. For more information about SBA's Surety Bond Guarantee Program, see <https://www.sba.gov/funding-programs/surety-bonds>.

SBA issued a Final Rule on Streamlining the Surety Bond Guarantee Program to address regulations that were obsolete, unnecessary, ineffective, or burdensome. That final rule was published in the *Federal Register* on August 8, 2022 (87 FR 48080). SBA also received approval from Office of Management and Budget (OMB) to revise the information collections language in the SBG Program's various forms, which were revised in accordance with that Final Rule, and are set to expire November 25, 2022.

B. Section-by-Section Analysis

Section 115.10. The definition of "Prior Approval Agreement" is being revised because Form 990A is being discontinued. The information collected on Form 990A has been integrated into current Form 990. SBA is removing the phrase "or Quick Bond Guarantee Application and Agreement (SBA Form 990A)" from the definition of "Prior Approval Agreement."

Section 115.30. SBA is removing references to the Quick Bond Guarantee Application and Agreement (SBA Form 990A), which is now discontinued. SBA is amending the remainder of paragraph (d) to remove the references to a choice of form.

Section 115.32. SBA is making a technical amendment to paragraph (b) to remove cross references to § 115.30(d)(1) and (2) because they are redundant.

SBA is amending paragraph (d)(1) to state that SBA Form 990 must be submitted to SBA when a surety notifies SBA of any increase or decrease in the contract or bond amount, even if the original application was on a Form 990A, *Quick Bond Guaranty Application and Agreement* form.

C. Compliance with Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a “significant regulatory action” under Executive Order 12866.

Executive Order 12988

This direct final rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism assessment.

Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements.

Previously, SBA engaged the public in rulemaking to revise, streamline, and modernize the Surety Bond Guaranty program. That final rule published in the *Federal Register* on August 8, 2022 (87 FR 48080). While developing that rule, SBA responded to specific inquiries from government officials and the public regarding changes in response to the notice of proposed rulemaking published in the *Federal Register* on September 23, 2021 (86 FR 52844).

This direct final rule revises some information collection language in SBG Program forms that conformed with the final rule published on August 8, 2022; that is set to expire November 30, 2025.

Congressional Review Act, 5 U.S.C. 801–808

The Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804(2).

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose new reporting or recordkeeping requirements under the Paperwork Reduction Act. The rule aligns the regulations with the discontinuation of SBA Form 990A, *Quick Bond Application and Agreement*, currently approved under OMB Control Number 3245-0378.

Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency issues a proposed rule, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This direct final rule only removes references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program, as SBA Form 990A is obsolete and has been discontinued. Accordingly, the Administrator of the SBA hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Justification for Direct Final Rule – Administrative Procedures Act

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative

Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA views this as a non-controversial administrative action because it merely removes references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program; as SBA Form 990A is obsolete and has been discontinued. This rule will be effective on the date shown in the DATES section unless SBA receives significant adverse comment on or before the deadline for comments. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because removes references to a discontinued form, with no extraneous interpretation or other expanded text.

If SBA receives significant adverse comment, SBA will publish a notice in the *Federal Register* withdrawing this rule before the effective date. If SBA receives no significant adverse comments, the rule will be effective 60 days after publication without further notice.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, small businesses, Surety bonds.

For the reasons stated in the preamble, SBA amends 13 CFR part 115 as follows:

PART 115--SURETY BOND GUARANTEE

Subpart A – Provisions for All Surety Bond Guarantees

1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110-246, Sec. 12079, 122 Stat. 1651.

2. Amend § 115.10 by revising the definition of “Prior Approval Agreement” to read as follows:

§ 115.10 Definitions.

* * * * *

Prior Approval Agreement means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

* * * * *

3. Amend § 115.30 by revising paragraph (d) to read as follows.

§ 115.30 Submission of Surety’s guarantee application.

* * * * *

(d) *Prior Approval Agreement*. To apply for a bond guarantee, a Prior Approval Surety must submit a *Surety Bond Guarantee Agreement* (SBA Form 990) and select one of the following application types:

(1) *Regular*. A Prior Approval Surety may complete and submit a *Surety Bond Guarantee Agreement* (SBA Form 990) indicating a Regular application type to SBA for each Bid Bond or Final Bond. This Form must be approved by SBA prior to the Surety's Execution of the bond. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(2) *Quick Bond Agreement*—(i) *General procedures*. Except as provided in paragraph (d)(2)(ii) of this section, a Prior Approval Surety may complete and submit a SBA Form 990 indicating a Quick Bond Agreement application type for each Bid Bond or Final Bond. This form must be approved by SBA prior to the Surety's Execution of the bond. The Quick Bond application type is used only for contract amounts that do not exceed \$500,000 at the time of application. The guarantee fees owed in connection with Final Bonds must be paid in accordance with §115.32.

(ii) *Exclusions.* The Quick Bond application type may not be used under the following circumstances:

(A) The Principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency;

(B) Work on the Contract commenced before a bond was Executed;

(C) The time for completion of the Contract exceeds 12 months;

(D) The Contract includes a provision for liquidated damages that exceed \$2,500 per day;

(E) The Contract involves asbestos abatement, hazardous waste removal, or timber sales; or

(F) The bond would be issued under a surety bonding line approved under § 115.33.

4. Amend § 115.32 by revising paragraphs (b) and (d)(1) to read as follows:

§ 115.32 Fees and Premiums.

* * * * *

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The percentage is determined by SBA and is published in Notices in the *Federal Register* from time to time. The Principal's fee is rounded to the nearest dollar and is to be remitted to SBA with the form submitted under § 115.30(d). See paragraph (d) of this section for additional requirements when the Contract amount changes.

* * * * *

(d) * * *

(1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or \$500,000 of

the original contract or bond amount, whichever is less, as soon as the Surety acquires knowledge of the change. Whenever the original bond amount increases as a result of a single change order of at least 25% or \$500,000 of the original contract or bond amount, whichever is less, the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement and is conditioned upon payment by the Surety of the increase in the Principal's guarantee fee as set forth in paragraph (d)(2) of this section. In notifying SBA of any increase or decrease in the Contract or bond amount, the Prior Approval Surety must use SBA Form 990 and select the application type that it used in applying for the original bond guarantee.

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Isabella Casillas Guzman

Administrator

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